

## DECISION

Dispute Codes      MNR, FF, MNDC, MNSD

### Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for a monetary order for unpaid rent for December 2010, January 2011 and February 2011, pursuant to section 67 of the *Act*. The tenant applied for:

- a monetary order for compensation for the cost of emergency repairs and for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and for
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties applied to recover their filing fees for their applications pursuant to section 72 of the *Act*.

### Preliminary Matters – Landlord's Application

The landlord said that she served the tenant with her dispute resolution hearing package when her husband posted it on the tenant's door, but she did not know when this occurred. The tenant disputed having received the dispute resolution hearing package from the landlord's husband. When I noted that this method of service delivery is not in accordance with the *Act*, the landlord changed her testimony, claiming that her husband handed a copy of the dispute resolution hearing package to the tenant. The landlord's husband gave sworn testimony that he tried to hand deliver the hearing package to the tenant but she would not open her door and he posted it on her door.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*

*(e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord has not served the tenant in a manner required by section 89(1) of the *Act*. As I am not satisfied that the landlord has served the dispute resolution hearing package to the tenant in accordance with the *Act*, I dismiss the landlord's application for dispute resolution with leave to reapply.

#### Preliminary Matters- Tenant's Application

The tenant said that she sent the landlord a copy of her application for dispute resolution hearing package on November 23, 2010, by registered mail. The landlord confirmed having received this hearing package. I am satisfied that the tenant served her hearing package to the tenant in accordance with the *Act*.

The tenant requested an adjournment of this hearing as she said that she was recovering from brain surgery and is presently under medical care at Royal Columbian Hospital. She said that she finds dealing with this matter in her present state stressful.

I asked the tenant if she had provided any written evidence to support her claim for a monetary Order other than three pages of documents related to a bailiff's action taken to enforce an Order before the Small Claims Court of the Provincial Court of B.C. I noted that enforcement of Orders pursuant to action taken in the Small Claims Court lies outside the *Residential Tenancy Act* and I could not deal with such matters. The tenant said that she had provided additional evidence and receipts. The Residential Tenancy Branch (RTB) has no record of receiving such material from her. During the hearing, the tenant reiterated that she found this process stressful and discontinued her participation in the dispute resolution hearing.

In reviewing the tenant's application, I note that the landlord no longer holds any portion of her original security deposit. By way of my November 25, 2010 decision, I allowed the landlord to retain all of the current worth of the tenant's security deposit, \$1,959.12, at that time. Since the tenant's security deposit has already been awarded to the landlord, I dismiss the tenant's application to obtain her security deposit as she is not entitled to obtain another decision regarding this item.

#### Issues(s) to be Decided

Should an adjournment of the tenant's application be granted? If not, is the tenant entitled to a monetary Order?

### Analysis

Rule 6 of the RTB Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. The RTB was not notified of the tenant's adjournment request until after this hearing commenced. In considering the tenant's request for an adjournment, I have taken into account Rule 6.4 of the Rules of Procedure. The RTB has no record of any relevant material submitted by the tenant with respect to her application for a significant monetary award of \$5,983.00. The tenant commenced her application for dispute resolution and was aware of this hearing date over 4 months ago. She did not attend the hearing with anyone, nor did she provide any evidence to support her oral testimony regarding her present health condition. I also note that the landlord has been attempting to obtain closure on this tenancy for many months. The tenant terminated her involvement in this telephone conference hearing without knowing whether she would be granted an adjournment. Under these circumstances, I have not granted an adjournment as the tenant has not met the criteria for granting an adjournment.

In the absence of any relevant evidence from the tenant, I dismiss the remainder of the tenant's application for dispute resolution without leave to reapply. Under these circumstances, the parties bear the cost of their filing fees.

### Conclusion

I dismiss the landlord's application with leave to reapply. I dismiss the tenant's application to recover her security deposit from the landlord as this matter is the subject of my previous decision of November 25, 2010. I dismiss the remainder of the tenant's application for dispute resolution without leave to reapply as the tenant has not produced any relevant evidence to support her application for a monetary award. Both parties bear their own costs for filing their applications.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.